

REMARKS

Applicant respectfully requests favorable reconsideration of this application in view of the remarks presented.

Claims 1, 4-10 and 12-40 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,399,016 to Burrow (hereinafter “the Burrow patent”). Applicants respectfully traverse.

The Examiner acknowledges that the Burrow patent does not show or disclose, ‘the use or specific placement of the solid feed means, platforms or doors for allowing the plant to be accessible by operators, ...’, and further that Burrow, “does not state where these platforms (access facilities) and doors should be placed in the plant.” However, despite these shortcomings in the prior art disclosure, the Examiner reaches the untenable conclusion that the claims are obvious, asserting that it is “well settled that where applied prior art shows or suggests all of the recited components of an apparatus operating in substantially the same manner with substantially equal utility as a claimed apparatus, *motivation* to alter the location or placement of the components would have been a modification obvious to one of ordinary skill in the art at the time the invention was made,” and cites MPEP, § 2144.04V#VI in support of this assertion. However, upon review of the cited section of the MPEP, it becomes obvious that the logic used for the rejection is faulty. Specifically, the case precedent stated in Subpart C “Rearrangement of Parts” of MPEP § 2144.04#VI, references a case that stands for the controlling proposition that, “*The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device.*” *Exparte Chicago Rawhide Mfg. Co.*, 223

USPQ 351, 353 (Bd. Pat. App. & Inter. 1989). Therefore, an issue involving an alleged “rearrangement of parts” must, in effect, meet that same standard.

However, the Office Action does not contain any assertion that the prior art provides any motivation to arrange or rearrange parts of the reference device to make the changes to arrive at the claimed device. Instead, it appears that the Examiner is averring that the motivation exists based on his view that the prior art device from the Burrow patent and the claimed device have “substantially equal utility” or that the various claimed components in Burrow and in the present invention are positioned in an “equally useful manner”. This is totally incorrect, and it should be pointed out that the smelting vessel and the plant as a whole, due at least in part because of the claimed location of the components in question, have a substantially *greater* utility, and that the components in the present invention are positioned in a *substantially more* useful manner, as compared with the Burrow device. This is disclosed in the present specification, in the third and fourth full paragraphs on page 4, and continuing throughout the specification, and particularly pages 20-23 thereof.

Perhaps it should be stressed that the focus of the present invention is not specifically the operating conditions present inside the smelting vessel, but rather the layout of the plant in order to facilitate external access and control, as well as to improve and facilitate the maintainability of the vessel and plant. These aspects are also summarized in the paragraphs cited above on page 4 of the Specification. The Burrow patent does not address these issues in any detail, and thus, it appears that there is no reasonable way for the Examiner to assert that the Burrow device and the claimed device are constructed in “an equally useful manner”, or have a “substantially equal utility”, with respect to the areas on which the present invention is focused. Similarly, it is difficult to comprehend how it can be asserted that the Burrow patent contains any “motivation” to

change the location of components that it either does not disclose, or discloses only in passing.

Applicants respectfully request an interview with the Examiner prior to the next Office Action, in the event that the Applicants' arguments presented in this response are not deemed to be persuasive with respect to the impropriety of the rejection and the patentability of the claims.

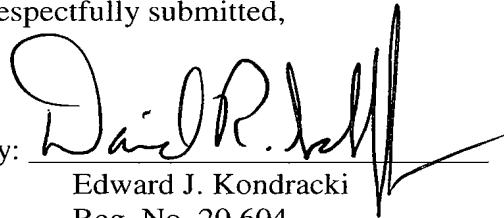
Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2211-9059US01) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Date: October 5, 2006

Respectfully submitted,

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